

Advisory Action

Application No.

09/540,558

Applicant(s)

FLANAGAN, TOM

Examiner

Joseph E. Avellino

Art Unit

2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: The arguments are not persuasive (see continuation sheet).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


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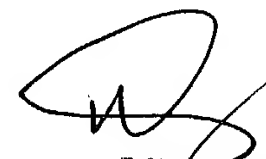
Applicants arguments dated May 5, 2004 have been fully considered but are not persuasive.

Applicant argues, in substance, that (1) Examiner does not provide motivation to combine the cited references, (2) the Appliance Server 100 of Mansbery is not characterized as an "Internet Server", and (3) the Appliances 200 of Mansbery clearly communicate with a remote client software 50 (Figure 2), and (6) the appliance server 100 of Mansbery does notify the client software/browser that the download has been completed.

As to point (1), In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Reynolds with Mansbery to allow testing of remote devices having limited processing capabilities, such as consumer appliances and other types of electronic devices, thereby reducing the need of sending a service representative to the appliance to determine if the appliance is malfunctioning as supported by Reynolds (col. 1, lines 15-25, 45-50). One of ordinary skill in the art would appreciate the abilities of the Appliance to be accessible through the Internet as described in Reynolds, namely the testing of appliances as stated above, however, when taken in context with the Mansbery reference, one of ordinary skill in the art would be so inclined as to remotely control the Appliance of Reynolds through the Internet, not on a separate network, such as the CEBUS powerline network described in Mansbery.

As to point (2), the term "server" as defined in the Microsoft Computer Dictionary (© 2002, Microsoft Corporation) is "on the Internet or other network, a computer or program that responds to commands from a client." Figure 2 clearly shows the Appliance server 100 is connected to the Internet (see between reference characters 50 and 100). By this rationale, it is understood that the Appliance Server 100 of Mansbery is considered an "Internet Server".

As to point (3), attention is turned to Figure 9, after the recipe information is selected by the proxy browser program 925, the appliance server will control the appliance by transmitting the button press sequence to execute the cooking step 955. No communication is seen between the appliance and the proxy browser. All communication from the appliance is sent only to the appliance server.



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